FEDERAL ELECTION

BEFOREATHE FEDERAL	LELECTION COMMISSION
In the Matter of the SEN 30 PM 3: 33	2014 JUH 30 PM 2: 44
MUR 6653 GOTTA VOTE!	DISMISSAL AND CASE CLOSURE UNDER A PRIORITY SYSTEM  DISMISSAL AND PRIORITY  DISMISSAL AND  CASE CLOSURE UNDER A  PRIORI

## **GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has determined that MUR 6653 should not be referred to the Alternative Dispute Resolution Office. Also for the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6653.<sup>1</sup>

In this matter, Complainant Debora Stalego alleges that her husband, Frank Stalego, received a mailer in the form of a post card prior to the 2012 presidential election that does not contain a disclaimer or "any notification as to where it came from or whom," in violation of the Act and Commission regulations. Compl. at 1. Complainant asserts that the mailer

The EPS rating information is as follows: Complaint Filed: October 1, 2012. No Response was filed because we were unable to locate and notify Respondents.

10

11

12

13

14

15

16

17

Dismissal and Case Closure Under EPS — MUR 6653 General Counsel's Report Page 2

- 1 expressly advocates for the election of President Obama and the Democratic Party. Id. The
- 2 Complaint includes copies of two images that appear to be the front and back sides of a mailer.
- 3 Id. at Attach 1. One image is imprinted with the text "GOTTA VOTE!" You can't afford not
- 4 to." This central text in large print is surrounded by phrases such as "Turnout will determine
- 5 this election" and "Your vote could make a difference." Id. The second image contains a
- 6 written message stating, "Dear Voter, I support President Obama because he made it possible
- 7 for young people to stay on their parent's health insurance until they are 26. Also because he
- 8 has cut taxes for all working Americans." Id. The second image contains an unidentifiable bar
- 9 code and a postage stamp, but it is not signed, dated, or postmarked. *Id.*

Whenever any person makes a disbursement for a "public communication" that expressly advocates the election or defeat of a clearly identified candidate, he or she must include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. §§ 110.11(a)(2), (b). Public communications authorized and paid for by a candidate, an authorized committee of a candidate, or an agent of either, must clearly state that the communications were paid for by the authorized political committee. 3 2 U.S.C. § 441d(a)(1); 11 C.F.R. §110.11(b)(1). Public communications authorized by a candidate, an authorized committee of a candidate, or an agent of either but paid for by another person, must clearly state that the communications were

During the 2012 election, Obama For America ("OFA") launched a website that used the phrase "Gotta Vote." See <a href="https://web.archive.org/web/20120922011829/http://blog.gottavote.org/post/23218590555/lets-get-started">https://web.archive.org/web/20120922011829/http://blog.gottavote.org/post/23218590555/lets-get-started</a>. This website contained a boxed disclaimer stating "Paid For By Obama For America." The post card at issue in the Complaint shares the same choice of words; however the post card does not contain any of the same logos or use the same typeface as GottaVote.org, and makes no reference to the GottaVote.org website or OFA.

A public communication is "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. The term public communication is defined to include mass mailings. *Id.* A mass mailing, in turn, is defined as a mailing of more than 500 pieces of mail of an identical or substantially similar nature within any 30-day period. 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. There is no available information as to whether the post card at issue in this matter was a mass mailing.

Dismissal and Case Closure Under EPS — MUR 6653 General Counsel's Report Page 3

- paid for by such person but authorized by the political committee. 2 U.S.C. § 441d(a)(2);
- 2 11 C.F.R. § 110.11(b)(2). Also, public communications not authorized by a candidate,
- 3 authorized committee, or an agent of either, must clearly state the name and permanent
- 4 address, telephone number or World Wide Web address of the person who paid for the
- 5 communications, and state that they were not authorized by any candidate or candidate's
- 6 committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3).
- 7 There is no available information as to who is responsible for the anonymous post card.
- 8 Additionally, the post card does not include a traceable bulk mail permit or a cancelation
- 9 stamp. Furthermore, there is no information that suggests that the post card was part of a mass
- mailing (i.e., greater than 500 pieces), nor is there any apparent way to discern the mailer's
- 11 potential distribution area.
- In light of the limited information available to determine whether the mailer qualified
- as a public communication under the Act and the unlikelihood that further research or
- 14 investigation would decisively determine who may have been responsible for the post card, the
- 15 Office of General Counsel recommends that the Commission exercise its prosecutorial
- discretion, pursuant to Heckler v. Chaney, 470 U.S. 821 (1985), to dismiss this matter.
- 17 Additionally, the Office of General Counsel recommends that the Commission approve the
- attached Factual and Legal Analysis and the appropriate letter, and close the file.

Dismissal and Case Closure Under EPS — MUR 6653 General Counsel's Report Page 4

## **RECOMMENDATIONS**

- 1. Dismiss MUR 6653, pursuant to the Commission's prosecutorial discretion;
- 2. Approve the attached Factual & Legal Analysis and the appropriate letter; and
- 3. Close the file.

General Counsel

BY:

Gregory R. Waker Deputy General Counsel

Assistant General Counsel Complaints Examination & Legal Administration

Donald E. Campbell

Attorney

Complaints Examination

& Legal Administration